

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

ROBERT TREVINO,
Plaintiff,
v.
E. DOTSON, et al.,
Defendants.

Case No. [15-cv-05373-PJH](#)

ORDER DENYING MOTION

Re: Dkt. No. 85

Plaintiff proceeds with a pro se civil rights action. Defendants filed a motion for summary judgment for failure to exhaust and plaintiff is to file his opposition by June 23, 2017. Plaintiff has now filed a motion to stay the proceedings and for an evidentiary hearing. Plaintiff also argues that he is still attempting to obtain discovery. However, the court stayed discovery pending resolution of the exhaustion motion. Many of plaintiff's discovery requests concern the underlying claims and are not relevant to the exhaustion motion. Plaintiff's motion is therefore denied. Plaintiff should present his arguments regarding exhaustion in his opposition to summary judgment. Once the summary judgment motion is fully briefed, the court will determine if a hearing is required.

Plaintiff has also returned two document subpoena forms for the court to serve. One subpoena involves his efforts to obtain contact information for two unserved defendants that were discussed in the court's prior order. The court will order that subpoena to be served. The court also informed plaintiff that the subpoenas were not a substitute for discovery. Plaintiff's second subpoena is for fingerprint evidence and photographs concerning the underlying disciplinary infraction that is the subject of this action. Because discovery is stayed pending resolution of the exhaustion motion, the

1 court will not serve this subpoena. In addition, the court's authorization of a subpoena
2 duces tecum requested by an in forma pauperis plaintiff is subject to limitations.
3 Limitations include the relevance of the information sought as well as the burden and
4 expense to the non-party in providing the requested information. Fed. R. Civ. P. 26, 45.
5 The "Federal Rules of Civil Procedure were not intended to burden a non-party with a
6 duty to suffer excessive or unusual expenses in order to comply with a subpoena duces
7 tecum." *Badman v. Stark*, 139 F.R.D. 601, 605 (M.D. Pa.1991); *see also United States v.*
8 *Columbia Broadcasting Sys., Inc.*, 666 F.2d 364 (9th Cir.1982) (court may award costs of
9 compliance with subpoena to non-party). Non-parties are "entitled to have the benefit of
10 this court's vigilance" in considering these factors. *Badman*, 139 F.R.D. at 605. Once the
11 exhaustion motion has been decided, plaintiff can seek this evidence from defendants, or
12 a motion to compel if the information has not been provided or through another subpoena
13 request. To the extent plaintiff argues that fingerprint evidence and photographs are
14 required to argue the exhaustion motion, he should present those arguments in his
15 opposition.

16 CONCLUSION

17 1. Plaintiff's motion for a stay and an evidentiary hearing (Docket No. 85) is
18 **DENIED.**

19 2. The Clerk shall sign the appropriate portions and provide the subpoena
20 regarding the unserved defendants to the United States Marshal who shall serve, without
21 prepayment of fees, the subpoena on the party listed on the subpoena.

22 **IT IS SO ORDERED.**

23 Dated: June 7, 2017



24
25
26 PHYLLIS J. HAMILTON
United States District Judge

1 UNITED STATES DISTRICT COURT
2 NORTHERN DISTRICT OF CALIFORNIA

3 ROBERT TREVINO,
4 Plaintiff,

5 v.

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CERTIFICATE OF SERVICE


9 I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S.
10 District Court, Northern District of California.

11
12 That on June 7, 2017, I SERVED a true and correct copy(ies) of the attached, by placing
13 said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by
14 depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery
15 receptacle located in the Clerk's office.
16

17 Robert Trevino ID: J-64367
18 Salinas Valley State Prison D4-#130L
19 P.O. Box 1050
20 Soledad, CA 93960

21 Dated: June 7, 2017

22
23 Susan Y. Soong
24 Clerk, United States District Court

25 
26 By: _____
27 Kelly Collins, Deputy Clerk to the
28 Honorable PHYLLIS J. HAMILTON